IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

S.B.CIVIL WRIT PETITION NO.7470/2002.

Hari Narain Sharma. **VERSUS** Raj.State Coop.Bank.Ltd. & Anr.

21.09.2006.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.M.C.Sharma, for the petitioner.
Mr.R.P.Garg, for the respondent-Bank.

*****

In the present writ petition, the petitioner is aggrieved as after his retirement the respondent-Bank refused to pay the dues of the petitioner who was employee with the respondent-Bank.

The case of the respondents in not paying the dues is that the petitioner had given a surety bound which has been filed as Annexure-R/1 along with the reply, executed against the loan taken by one Umesh Bharadwaj on 26.04.1997 for a sum of Rs.10,000/-.

The submission of the learned counsel for the respondent-Bank is that since the aforesaid loan taken by Umesh Bharadwaj had not been repaid, the respondent-Bank as per the surety bond was entitled to recover the amount due from Umesh Bharadwaj in accordance with the surety bond executed by the petitioner for the aforesaid purpose.

Learned counsel appearing on behalf of the petitioner submits that so far as the dues which are liable to be paid by Umesh Bharadwaj are concerned, the petitioner is willing to discharge the aforesaid liability and the respondent-Bank may deduct the amount which is due to the Bank from Umesh Bharadwaj out of the dues which

the petitioner owes to the petitioner on account of the retirement benefits.

In view of the above statement made by the learned counsel for the petitioner, it is hereby directed that so far as the amount due on account of the loan taken by Umesh Bharadwaj is concerned which as on 1st February, 2006 stood at Rs.37,980/-, the same may be deducted from the amount due to the petitioner by the respondent-Bank, if the same has not been repaid till date. The aforesaid deduction be made within a period of fifteen days.

Learned counsel for the respondent-Bank also urged that the wife of the petitioner Smt.Vijay Sharma has also taken a loan and that the petitioner being the husband of Smt.Vijay Sharma is liable to indemnify and repay the amount.

So far as the above contention of the learned counsel for the respondent-Bank is concerned, the learned counsel for the respondent-Bank fairly conceded that the petitioner has not executed any document by way of surety bound or otherwise for the alleged loan taken by Smt.Vijay Sharma. Learned counsel for the petitioner also disputed the fact that Smt.Vijay Sharma is the wife of the petitioner.

So far as the outstanding amount on account of the loan taken by Smt.Vijay Sharma is concerned, since there is no document to support the plea of the respondent-Bank or to suggest that the petitioner had given any surety for the loan taken by Smt.Vijay Sharma it is not understandable as to how the petitioner is liable for the aforesaid amount taken by way of loan by Smt.Vijay Sharma.

In the facts and circumstances, therefore, the respondent-Bank

in my view cannot recover the amount in the absence of any contract executed by the petitioner in favour of the respondent-Bank to reimburse the amount of loan taken by Smt.Vijay Sharma.

As a result, this writ petition is disposed of with a direction that the respondent-Bank shall pay the dues to the petitioner on account of his retirement by way of leave encashment and arrears of revised pay within a period of fifteen days of furnishing of the certified copy of this order after deducting the amount which may be due on account of the loan taken by Umesh Bharadwaj. The respondent-Bank in my view cannot withhold the amount of the petitioner on account of the loan which might have been taken by Smt.Vijay Sharma. It is further directed the respondent-Bank shall pay to the petitioner the interest on the balance amount @ 12% per annum w.e.f. the date of retirement i.e. 31.07.2000.

Consequently, this writ petition as well as the stay application stand disposed of.

(DALIP SINGH),J.

Solanki DS, Jr.P.A.